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COMMITTEE AGAINST TORTURE

Seventeenth session

SUMMARY RECORD OF THE 276th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 20 November 1996, at 10.30 a.m.

Chairman: Mr. DIPANDA MOUELLE

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The meeting was called to order at 10.45 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Poland (CAT/C/25/Add.9)

1. At the invitation of the Chairman, Mr. Kuzniar, Mr. Dzialuk and Ms. Kowalczyk (Poland) took places at the Committee table.

2. Mr. KUZNIAR (Poland) said that the second periodic report of Poland (CAT/C/25/Add.9) reflected the importance his country attached to the eradication of torture and other cruel, inhuman or degrading treatment or punishment.

3. Following the Committee's consideration of the initial report of Poland, (CAT/C/9/Add.13), changes had been made to the relevant Polish legislation in the last two years and were described in the report. He hoped that today's meeting would enable further improvements to be made in Polish legislation concerning the administration of justice and the prison system.

4. He drew attention to a supplementary report recently prepared by the Ministry of Justice updating the information contained in the second periodic report.

5. Mr. DZIALUK (Poland) apologized for the late submission of the supplementary report referred to by Mr. Kuzniar, which would be circulated to members of the Committee. It set out recent developments in the Polish legal system and contained statistical data up to November 1996.

6. The question of incorporating a definition of torture into Poland's domestic legislation had been raised by the Committee in its comments on the initial report of Poland. Although there had been no substantial change in the situation, the supplementary report showed that a theoretical third level of protection was granted under the Polish Penal Code and other legislation. For historical reasons Poland was reluctant to include formal definitions in its penal codes. Instead acts were punished on the basis of their physical consequences, and the arguments in the supplementary report might well lead the Committee to conclude that any act that might be classified as torture under article 1 of the Convention was adequately covered by the provisions of criminal law. Moreover, major changes to the Penal Code, the Code of Criminal Procedure and the Penal Executive Code had been submitted to Parliament in 1995. It was hoped that, before the next periodic report fell due in 1998, the necessary parliamentary procedures would have been carried out and the legislation would be in force.

7. The same applied to the legislation relevant to article 2. Unfortunately, the legislative provisions referred to in the second periodic report, which had been prepared some two years before, had not been adopted by Parliament, but prima facie they did not affect the rights of a victim of torture.

8. Another issue referred to by the Committee was that of the death penalty. Poland formally retained capital punishment under the 1969 Penal Code, which was still in force although significantly amended. In the new draft Penal Code the death penalty would be replaced by imprisonment for life or for terms of 25 to 35 years. However, that provision was being contested and a majority of the public were in favour of retaining capital punishment. Nevertheless a five-year legal moratorium on the carrying-out of the death sentence had come into force in November 1995, which was considered as a step towards the complete abolition of capital punishment. Moreover, at present there was no one in a Polish prison awaiting capital punishment. His Government's position was that after the expiry of the moratorium new legislation abolishing the death penalty would be in force. As appendix 6 of the supplementary report showed, between 1990 and 1995 the annual number of sentences of capital punishment had ranged from none to four, and all of them had been reversed on appeal.

9. In July 1995 a major amendment to the Code of Criminal Procedure had been adopted, and part of it had entered into force in August 1996. That provision gave sole authority to the courts to decide on arrest pending a trial.

10. The Committee had raised several points in connection with international cooperation in criminal matters. Since the submission of its initial report, Poland had become a party to a number of international treaties, including the European Convention on Extradition of 1957, the Agreement on the Transfer of Foreign Prisoners, and the Convention on the Application of Standards of the Council for Mutual Economic Assistance. It had also concluded bilateral treaties with some of its neighbours, including Belarus, Latvia, Lithuania, the Russian Federation and Ukraine in order to fill gaps caused by problems of State succession.

11. The supplementary report contained preliminary statistics on requests for extradition and "wanted" notices sent to Poland, mainly through INTERPOL. So far no request for extradition had been refused on the grounds of article 2 of the Convention, but one case was pending in which direct references to article 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms and article 2 of the Convention were likely to be made.

12. The question of the place of international legal provisions in Poland's domestic legal system had also been raised by the Committee. He confirmed that the place of international provisions in Polish law was no longer in question. However, what was lacking was a constitutional provision confirming that position. It was expected that the new draft Constitution would be ready before the next parliamentary elections to be held by the autumn of 1997. All five pieces of major draft legislation that were pending confirmed that the international provisions ratified by Poland ranked equally with constitutional or statutory provisions. Thus the definition of torture in article 1 of the Convention would be part of the Polish legal system ex proprio vigore and there would be no need to introduce it by means of a statute.

13. The CHAIRMAN thanked the delegation of Poland for the valuable information it had provided. It was, however, unfortunate that the supplement

to its report had only just been submitted and had not yet been circulated to all members of the Committee, since it might have obviated the need for some of the questions that the experts would be asking the delegation.

14. Speaking as Country Rapporteur, he requested a brief account of how the judicial system in Poland was organized, how judges were recruited and what the procedure was for dismissing them.

15. Beginning with the core document on Poland (HRI/CORE/1/Add.25), he referred to paragraph 25, in which it was stated that justice in Poland was dispensed by the Supreme Court, the ordinary courts and the emergency courts. What was meant by "emergency courts"? Paragraph 26 of the core document stated that judges were appointed by the President on the nomination of the National Judicial Council. What was the composition of that Council? And were its decisions binding on the President?

16. In the second periodic report (CAT/C/25/Add.9), paragraph 3 provided information on physical violence committed against minors in reformatories and children's shelters. He asked whether Poland's legislation allowed the use of physical force against minors or, for that matter, against adults. Had there been any inspections to monitor the use of physical force in Poland's prisons?

17. Paragraph 5 of the second periodic report cited the case of a child whose nose had been broken in an incident involving an instructor. How had the instructor been punished?

18. Paragraph 8 referred to "unlawful behaviour towards detainees". Could the Polish delegation explain what was meant by that? Did it involve the use of force? And, if so, was such use of force allowed under Polish legislation?

19. Concerning article 2 of the Convention, it was not clear whether in Poland the orders of a superior could be invoked to justify the use of torture.

20. With regard to article 4, the delegation had stated that international conventions and Polish domestic law were on an equal footing and that it was therefore unnecessary to incorporate a definition of torture into domestic law. He disagreed; as he saw it, no provisions of Polish legislation punished the crime of torture as such. The Committee wanted specific data on that offence. Without a specific definition of torture under Polish law, it would be difficult for the authorities to provide the Committee with statistics on torture, namely, acts which caused severe physical or mental pain or suffering, as defined in article 1 of the Convention.

21. As to article 6 of the Convention, paragraph 35 of the second periodic report spoke of the "draft new Code of Criminal Procedure". He sought further clarification on the new code, while pointing out that the Committee preferred to discuss legislation only after it had been adopted.

22. In connection with articles 12 and 13 of the Convention, he asked for more information on domestic legislation which facilitated the implementation of those articles, in particular concerning prompt investigation of

allegations and the protection of persons claiming to have been victims of torture. Also had any officials been prosecuted for torture? And were any statistics available on that subject?

23. Turning to article 14, he inquired whether the State assumed liability for paying compensation to victims in cases in which the perpetrators of torture were financially unable to do so.

24. Mr. YAKOVLEV (Alternate Country Rapporteur) said that he was pleased to welcome the delegation of free and democratic Poland and was looking forward to receiving the new Penal Code and Code of Criminal Procedure referred to in the second periodic report.

25. Noting that it was in pre-trial detention that torture was most likely to occur and that under the new Code of Criminal Procedure arrested persons had the right to lodge a complaint with the court, he asked whether, if such a complaint was not forthcoming, the court would intervene when it considered such action necessary. Was it possible to challenge the grounds given for the arrest? Did those arrested appear in court in person? Were they entitled to see a counsel for the defence? Did an arrested person have access to a lawyer as soon as he was arrested, or only after the preliminary investigation, as had been the case in the former Soviet Union? He also inquired whether the new Penal Code made provision for habeas corpus and for trial by jury, and whether the accused had the right to refuse to give evidence.

26. He asked the delegation of Poland whether it could provide statistics on the number of persons currently in pre-trial detention or serving prison terms. Would the new Penal Code make evidence obtained under torture inadmissible?

27. He sought further clarification on how Poland dealt with contradictions between international agreements which it had ratified and domestic legislation. Paragraph 1 of the supplement provided by the delegation stated that Poland was bound by international agreements, whose provisions must be applied directly, without need to amend the relevant provisions of domestic legislation "if the norms of the international agreement are of self-executing character". He inquired what the difference was between such norms and ones that were not of self-executing character, who decided whether they were or were not, and on the basis of what criteria.

28. He wished to ask the delegation a question about Poland's initial report (CAT/C/9/Add.13). According to part II, paragraph 5, of that report, the Police Act recognized that a policeman who committed a forbidden act in the execution of an order or instruction did not commit an offence unless he was aware that, by agreeing to execute the order or instruction, he was committing an office. To his mind, that was at variance with the basic principle of criminal law that ignorance of the law was no excuse. Furthermore, article 2, paragraph 3, of the Convention specifically stated that an order from a superior officer or a public authority could not be invoked as a justification of torture. He asked the delegation of Poland to comment.

29. Turning to the second periodic report, he noted that paragraph 9 referred to the conviction of 10 former prison officers for unlawful behaviour towards detainees. That was rather vague. Could the Polish delegation specify what that behaviour had entailed?

30. Paragraph 10 of the second periodic report stated that Poland's legislative, administrative and judicial machinery effectively prevented torture throughout the country. Yet the new material in the supplement was not so categorical. Perhaps the delegation could provide further data in that regard.

31. Paragraph 28 of the supplement informed the Committee that Poland had ratified the Council of Europe's European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, for which Poland was to be commended, and that at the end of June and the beginning of July 1996, the Council of Europe's Committee for the Prevention of Torture had conducted an inspection of Polish detention and isolation centres, but the official report on the findings had not yet been submitted. The Committee would like to receive a copy of those findings.

32. Lastly, could the delegation explain what the machinery was for monitoring respect for the rights of prisoners? How were prisoners' complaints reviewed, and with what results?

33. Mr. SORENSEN said he hoped that the Polish authorities would publish the report of the European Committee for the Prevention of Torture on its visit to Poland. In that event, the report could be circulated to the members of the Committee against Torture.

34. Following its consideration of Poland's initial report (CAT/C/9/Add.13), the Committee had recommended in its report (A/49/44) that a specific training programme on the prevention of torture should be organized for civil and military personnel, lawyers and members of the medical profession. Poland's response to that recommendation in paragraph 47 of its second periodic report was not satisfactory. Noting the paramount importance of education in countries that were in transition to a new system, he asked for more comprehensive information on how the prevention of torture was incorporated into training programmes.

35. He was pleased to note that Poland had guaranteed the right of victims of torture to redress and compensation in compliance with article 14 of the Convention. Were there any medical rehabilitation centres in Poland or any plans to establish such centres.

36. He urged Poland to contribute to the United Nations Voluntary Fund for Victims of Torture.

37. Mr. ZUPANCIC noted that the Polish legislature was reluctant to incorporate formal definitions into the Penal Code. However, the idea was not to copy the definition of torture in article 1 of the Convention into the Code, but rather to base the sanctions laid down by the Polish legislature on a definition that was complex and well thought out.

38. According to article 15, neither the direct results of torture, for example in the form of confessions, nor the subsequent results of such confessions should be admitted as evidence. It was easier to filter out evidence of that nature in trials by jury and it was also essential to exclude it from files seen by the investigating magistrate.

39. Was it possible for persons in pre-trial detention to lodge a complaint with the Constitutional Court? Had any detainees been released as a result of such a complaint?

40. The CHAIRMAN invited the Polish delegation to reply at the next meeting to the various questions that had been raised.

41. The delegation of Poland withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

42. The CHAIRMAN said he took it that the Committee agreed to appoint Mr. Gonzalez Poblete Country Rapporteur for the third periodic report of Spain. He volunteered his own services as Alternate Country Rapporteur.

43. It was so decided.

Proceedings of the Working Group on a draft optional protocol to the Convention

44. Mr. SORENSEN said that the Working Group on a draft optional protocol to the Convention had met for its second reading in October 1996. States parties that ratified the proposed optional protocol would permit on-site inspection of places of detention. He had arranged a slide projection for the participants at the recent session to explain the purpose of such inspections and how they should be conducted.

45. The slides shown to the Working Group were projected.

46. Mr. SORENSEN said that visits to places of detention should not be announced in advance. The inspectors should have free access in private to all detainees and should view all rooms and documents. States such as Cuba, China and the Syrian Arab Republic would allow visits only on the basis of "informed consent" but other States took the view that ratification of the proposed optional protocol would imply informed consent. There was as yet no agreement in the Working Group on how much information regarding possible inspection sites should be provided prior to a visit. However, agreement had been reached on the articles concerning the establishment of a sub-committee and the recommendations of the Committee against Torture in that connection had been followed. Many States parties had advocated the inclusion of politicians among its members but the final wording of article 4, paragraph 2, was:

> "The members of the Sub-Committee shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular in criminal law, prison

> or police administration or in the various medical fields relevant to the treatment of persons deprived of their liberty or in the field of human rights."

Paragraph 4 of the same article stipulated that members were to serve in their individual capacity and were to be independent and impartial.

47. The Committee against Torture would not be involved in the election procedure. Each State party could nominate up to two candidates and the members of the sub-committee would be elected by secret ballot at a meeting of States parties. Primary consideration would be given in the election to fulfilment of the criteria set out in article 4 and due consideration to a proper balance among the fields of competence referred to in that article. Other criteria were equitable geographical distribution, the representation of different forms of civilization and legal systems, and balanced representation of women and men.

48. Mr. BRUNI (Secretary of the Committee), replying to a question by Mr. Gonzalez Poblete, said that the report of the Working Group would be submitted to the Commission on Human Rights at its next session in spring 1997 and would therefore be circulated to the members of the Committee in time for the eighteenth session.

International Conference on Torture

49. Mr. SORENSEN reported on the International Conference on Torture organized by Amnesty International in Stockholm in October 1996, which he had attended with Mr. Gonzalez Poblete and the Secretary of the Committee. The Conference had adopted a Plan of Action against Torture. The following paragraph on "Resources" was of particular interest to the Committee:

> "NGOs should insist that more funds be allocated to the grossly under-funded human rights programmes at the United Nations and regional intergovernmental organizations. Within the United Nations human rights programme, more personnel should be allocated to bodies and mechanisms that combat torture, which are themselves under-resourced in comparison with other parts of the programme. NGOs should campaign for increased donations to the United Nations Voluntary Fund for Victims of Torture."

50. Mr. GONZALEZ POBLETE said that NGOs had been urged during the Conference to put pressure on the authorities in States parties to make the declarations under articles 21 and 22 of the Convention. Only one third of States parties had done so and most of them were European.

51. Mr. SORENSEN noted that States parties which had not made the declaration under article 22 were unlikely to ratify the draft optional protocol. Of the 39 States parties that had made the declaration to date, 24 were covered by the inspection procedure of the European Committee for the Prevention of Torture. The remaining 14 included Croatia, Yugoslavia, Monaco, New Zealand, Australia and Canada.

The meeting rose at 1 p.m.